Supreme Court, U.S.
FILED
JAN 3 2001
CLERK

(2)

No. 00-611

In the
SUPREME COURT OF THE UNITED STATES

MARGARET WALKER,
Petitioner,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

BRIEF OF RESPONDENT IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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8 pp

QUESTION PRESENTED

Whether Title I of the Americans With Disabilities Act, 42 U.S.C. §§ 12111 to 12117 (1995 & Supp. 2000), is a proper exercise of Congress's power under Section 5 of the Fourteenth Amendment, thereby constituting a valid exercise of congressional power to abrogate the States' Eleventh Amendment immunity from suit by individuals.

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Respondent Missouri Department of Corrections respectfully requests that the Court deny the petition, or that it grant the petition, vacate the decision of the Eighth Circuit, and remand the case for further consideration in the court of appeals – depending on the Court's disposition of a case, already argued before it, addressing the legal issue petitioner poses.

COUNTERSTATEMENT OF THE CASE

Petitioner was employed by Respondent until 1994, when she stopped working, assertedly because of her disability. Petitioner subsequently filed suit against Respondent alleging violation of both Title I of the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq* (the "ADA"), and the Missouri Human Rights Act, § 213.010 RSMo. 1986. According to Petitioner, Respondent did not adequately accommodate her disability. The district court granted summary judgment in favor of Respondent on Petitioner's claims under both statutes.

After the district court's ruling, the United States Court of Appeals for the Eighth Circuit decided two cases in which it held that Congress lacked the power to abrogate a state's Eleventh Amendment immunity under the ADA. In *Alsbrook v. City of Maumelle*, 184 F.3d 999 (8th Cir. 1999) (en banc), *cert. granted in part*, 120 S.Ct. 1003 (2000), *cert. dismissed*, 120 S.Ct. 1265 (2000), the Eighth Circuit held that under Title II of the ADA, Congress could not abrogate a state's immunity in federal court. Later, in *DeBose v. Nebraska*, 186 F.3d 1087, 1088 (8th Cir. 1999), the Eighth Circuit extended its holding regarding a state's immunity under the ADA to also include Title I. Bound by these intervening precedents, the Eighth Circuit determined that it could not reach the merits of Petitioner's appeal and affirmed the judgment of the district court.

ARGUMENT

Petitioner correctly aligns this case with one pending before the Court, *University of Alabama Board of Trustees v. Garrett*, No. 99-1240. The Eighth Circuit here held that its decision was bound by its precedents in *Alsbrook* and *DeBose*. These Eighth Circuit cases, and now *Garrett*, raise precisely the issue on which the Eighth Circuit decided this case – an issue as to which, at least for now, there remains a substantial split among the circuits: whether the Americans with Disabilities Act (ADA) can be applied against the states.

Petitioner suggests, first, that this petition "be held pending the Court's decision in" *Garrett*. Petition at 5. Such a step would be consistent with the Court's longstanding practice where, as here, a petition raises a question already before the Court in another case.

Petitioner then suggests that the Court at some point grant this petition. *Id.* That would make sense only if the Court affirmed the decision in *Garrett* (*i.e.*, held that the ADA can be applied against the states). Because such a decision would affect the validity of the precedents on which the Eighth Circuit relied in this case, the appropriate course would be to grant the petition, vacate the court's holding, and remand the case. But it would not make sense to grant the petition and remand if the Court reversed *Garrett*, (*i.e.*, effectively affirmed *Alsbrook* and *DeBose* by holding that the ADA cannot be applied against the states). Because Petitioner implicitly concedes that she presents no question that merits review beyond the issue presented in *Garrett*, the appropriate course then would be to deny the petition and leave the Eighth Circuit's holding intact.

CONCLUSION

The petition for writ of certiorari should be resolved consistent with this Court's decision in *University of Alabama Board of Trustees v. Garrett*, No. 99-1240.

Respectfully submitted,

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January 4, 2001